

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Case No. 3:19-cr-00048-MMD-WGC-1

Plaintiff,

ORDER

v.

EDUARDO ALVAREZ, JR.,

Defendant.

I. SUMMARY

Defendant Eduardo Alvarez, Jr. was indicted on a single count of felon in possession of a firearm. (ECF No. 1.) Defendant moves to suppress the evidence the government has collected against him, arguing his constitutional rights were violated in several ways warranting suppression, beginning with his initial encounter with Washoe County Sheriff's Office ("WCSO") Deputy Victor Gamboa pertinent to this case ("Motion").¹ (ECF No. 20.) As further explained below, the Court agrees with Defendant that Deputy Gamboa seized Defendant without the particularized reasonable suspicion required for an investigatory stop to pass constitutional muster. Further, because the Court agrees with Defendant on these broadest arguments, it will not reach all of the arguments he raised in his Motion. (*Id.* at 19-25 (making the arguments the Court will not address in this order).) And as all evidence in this case flows from Deputy Gamboa's unlawful detention of Defendant, the Court will order the suppression of all of the evidence the government has collected in this case.

¹The government filed a response (ECF No. 29), and Defendant filed a reply (ECF No. 33).

II. FINDINGS OF FACT²

The Court relies on the evidence filed by Defendant with his Motion, along with the evidence filed by the government with its response, including audio recordings of the pertinent 911 calls and video recordings of relevant body camera footage, to construct this factual background. The Court also notes that it only makes factual findings pertinent to the legal discussion that follows farther below.

At 8:54 p.m. on August 25, 2019 (ECF No. 29 at 2), T.W., who lives at the end of Dutch Flat Road in Sun Valley, Nevada—which borders open space in the desert hills—called 911 to complain about shooters up in the hills. (ECF No. 20-2, USAO 00097.) He guessed that people were shooting up on the nearby Chimney Road, after it turned to dirt, near some water towers. (*Id.* at 0:00-0:20.) As he identified on the call, there is Bureau of Land Management (“BLM”) land up there, where recreational target shooting is permitted in certain places, depending on the type of weapon and the precise location. (*Id.* at 0:20-0:27; *see also* ECF Nos. 20 at 2, 4-6, 29 at 3-4, 33 at 2-3 (disputing the specifics, but generally agreeing the caller was describing an area managed by BLM where some types of target shooting is permitted).) T.W. asked that somebody be sent up there to ‘shut the shooters down’ because it was almost 9 p.m. on a work night. (ECF No. 20-2, USAO 00097 at 0:27-0:43.) He guessed there were at least five shooters. (*Id.* at 0:43-0:49.) He explained he was concerned about the shooting not just because of the noise, but because it was fire season, and he thought that anybody who, like the shooters, would still be up there shooting after dark probably did not have a fire extinguisher, or was otherwise not taking the proper precautions to prevent wildfires. (*Id.* at 1:01-1:53.)

²See Fed. R. Crim. P. 12(d) (“When factual issues are involved in deciding a motion, the court must state its essential findings on the record.”). Defendant argues, and the government does not dispute, that an evidentiary hearing is unnecessary because the relevant facts are not disputed and are captured on the submitted recordings. (ECF No. 20 at 1 n. 2; ECF No. 33 at 1.) The Court agrees that the essential facts are captured on the recordings, rendering an evidentiary hearing superfluous.

1 He concluded the call by saying he would be willing to sign a noise complaint about the
2 shooting, giving his name and contact information, and again asking that the dispatcher
3 send someone up there to check it out. (*Id.* at 1:53-2:38.)

4 At 9:01 p.m., a female caller who refused to identify herself also called 911 to
5 complain about shooters up in the hills, and asked for something to be done about them.
6 (ECF No. 29 at 2.) Like T.W., she also guessed the shooting was coming from the dirt
7 portion of Chimney Road. (ECF No. 20-2, USAO 000100 at 0:23-0:35.) She could not say
8 how many shots she had heard. (*Id.* at 0:35-0:55.) She also was not sure what type of
9 guns were being fired, and had not seen any people, or vehicles containing people, she
10 thought were doing the shooting. (*Id.* at 1:40-1:55.)

11 At approximately 8:54 p.m., Deputy Gamboa was dispatched to Chimney Road to
12 investigate the report (presumably T.W.'s, based on the time) of target shooters in the
13 area. (ECF No. 20-5 at 6.) Deputy B. Johnson was also dispatched to the same general
14 area to investigate. (ECF No. 20-4 at 3-4.) Deputy Gamboa had been patrolling in this
15 general area for about two years at the time, and was familiar with the Chimney Road
16 area specifically. (ECF No. 29-3 at 2.) He was aware that people frequently target shoot
17 in the area, but that shooting close to occupied dwellings is restricted, and was aware
18 that target shooting in that area can cause wildfires. (*Id.*)

19 Deputy Gamboa drove out to the dirt portion of Chimney Road to the water towers
20 referenced in T.W.'s call, and then kept driving. (ECF No. 20-5 at 6.) About a half-mile
21 past the water towers, he encountered three men standing by two Chevrolet trucks, one
22 black Chevrolet Avalanche, and one white Chevrolet 3500. (*Id.*) He stopped his WCSO
23 vehicle and got out. (ECF No. 20-6 at 0:41-0:48.) He yelled to the men, "What's going on
24 guys?" (*Id.* at 0:48-0:50.) Then he yelled, "You guys are stuck?" (*Id.* at 0:50-0:52.) The
25 men's reply to both questions is inaudible. Next Deputy Gamboa asked, "You guys
26 shooting out here at all?" (*Id.* at 0:48-0:50.) The men reply, "Nah." (*Id.* at 0:50-0:51.)
27 Deputy Gamboa proceeds to ask them if they have any guns or weapons on them,
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1 explaining that he “just needs to know,” and stating that he does not care if they do. (*Id.*
2 at 0:52-1:05.) “Just be honest with me,” Deputy Gamboa says, “I just need to know who
3 I’m talkin’ to, you know what I’m saying?” (*Id.* at 1:05-1:07.) The men’s response is not
4 audible, but they seem to indicate they do not have any guns. (*Id.*)

5 Deputy Gamboa then repeats that he needs to know if the men have any guns
6 because WCSO has gotten calls that people have been shooting in this area, and people
7 do not normally come this far up the dirt portion of Chimney Road. (*Id.* at 1:08-1:22.) The
8 man in the black sleeveless shirt (Defendant) replies that actually, he rides ATVs up here
9 a lot. (*Id.* at 1:23-1:27.) That prompts Deputy Gamboa to ask the men if they have seen
10 anyone riding ATVs in the area that day. (*Id.* at 1:25-1:27.) The man in the white t-shirt
11 responds that, yes, actually, they had seen about four men riding ATVs. (*Id.* at 1:28-1:31.)
12 Deputy Gamboa responds with a question; “Have you seen anybody shooting out here,
13 have you heard any shots?” and then confirms the men said they had heard some
14 shooting, but they weren’t sure how many shots or how many shooters they heard by
15 repeating it back to them. (*Id.* at 1:31-1:40.) Deputy Gamboa then asks, “is it just you guys
16 out here, just you three?” and then seems to confirm they replied yes, because he says,
17 “alright.” (*Id.* at 1:41-1:43.)

18 Deputy Gamboa takes a few steps closer to the men, and then says, “Okay you
19 guys, just for right now, just do me a favor, just keep your hands where I can see them—
20 don’t be reaching in your pockets or towards your waistbands, or nothing like that,
21 alright?” (*Id.* at 1:44-1:50.) The men stand there. Deputy Gamboa then spends the next
22 50 seconds talking into his radio as he watches three sets of headlights come down the
23 dirt road towards him. (*Id.* at 1:50-2:40.)

24 The first vehicle to reach Deputy Gamboa is an ATV ridden by a man in a pink
25 button-down shirt, with a dust mask on. Deputy Gamboa shines his flashlight at the man
26 and says, “Stop right here, bro.” (*Id.* at 2:40-2:42.) For the following 12 minutes or so,
27 Deputy Gamboa focuses his attention on the second group of men including the man on
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1 the ATV (the "Second Group"), and Defendant and the two men who presumably were
2 driving the white Chevrolet truck (the "First Group")³ continue to stand where they are.
3 (*Id.* at 2:42-14:00.) However, at a little before five minutes after Deputy Gamboa switches
4 his body cam on, Defendant appears to ask he if can go, and Deputy Gamboa explains
5 he cannot. (*Id.* at 4:48-5:18.) He instead tells Defendant that he is going to try and get
6 him out of here as soon as he can. (*Id.*)

7 In those 12 minutes he focuses on the Second Group (*Id.* at 2:42-14:00), Deputy
8 Gamboa stops all three vehicles making up the Second Group: the ATV, a green Toyota
9 4Runner, and a gray truck with another ATV in the back. (*Id.*) He eventually makes all
10 four men in or on these three vehicles get out of them and sit separately in the dirt. He
11 frisks and handcuffs the man on the ATV. (*Id.*) He questions the man on the ATV about
12 whether the man has a gun, and after initial denials, perhaps due to confusion about
13 whether Deputy Gamboa asked the man if he had a gun on him, or had a gun at all,
14 Deputy Gamboa gets him to admit that he has a nine millimeter handgun under the seat
15 of the green 4Runner. (*Id.*) During these 12 minutes, other deputies, most notably Deputy
16 Johnson, also arrive. (*Id.*) Deputy Gamboa takes IDs from all four men in the Second
17 Group and hands them off to another deputy, who runs the criminal histories of the four
18 men in the Second Group. (*Id.*) He and Deputy Johnson thoroughly search both the green
19 4Runner and the gray truck with the ATV in the back. (*Id.*) They eventually find the nine
20 millimeter handgun in the green 4Runner, and find out the man in the pink button-down
21 shirt who arrived on the ATV is wanted on an outstanding warrant for failure to pay a fine.
22 (*Id.*)

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26 ³Defendant later explains on video that he did not know the other two men, and
27 had stopped to try to pull them out when he encountered them. (ECF No. 29-9 at 10:47-
11:00.) This also appears to have happened not long before Deputy Gamboa arrived.

1 Around 13 minutes and 15 seconds into the bodycam recording, Deputy Gamboa
2 asks the man in the pink button-down, “why you guys out here shooting in the middle of
3 nowhere?” (*Id.* at 13:15-13:17.) The man starts to explain something about how a
4 motorcycle got a flat, but Deputy Gamboa orders him to sit down in the dirt while telling
5 the man that Deputy Gamboa knows he’s been shooting, and that he’s been drinking,
6 because the man has red, watery eyes, and Deputy Gamboa found a case of Modelo
7 (beer) in the 4Runner. (*Id.*)

8 Once the man in the pink button-down is sitting in the dirt, Deputy Gamboa
9 happens to be looking towards Defendant, who is standing where he has been the entire
10 time Deputy Gamboa has been interacting with the Second Group—in front of his black
11 Chevrolet Avalanche, on top of a small knoll. Defendant must have said something to
12 him, because Deputy Gamboa yells to Defendant, “What’s that?” (*Id.* at 14:04-14:06.)
13 Defendant repeats his question. (*Id.* at 14:06-14:07.) Deputy Gamboa responds, “Give
14 me a sec, bro, I’ll get you guys here in a minute. Can I pat you guys down? [...] I know
15 you guys told me you don’t have any guns, but I just want to make sure. You guys have
16 been super cool with me, so I’m a try’a keep it cool with you guys, you know what I mean?
17 You guys have been nothing but respectful, so I appreciate that.” (*Id.* at 14:07-14:25.)
18 Defendant and the two other men making up the First Group continue to stay where they
19 are, and do not move.

20 About thirty seconds later, another officer, who Deputy Gamboa identifies as
21 “Sarge,” approaches Deputy Gamboa. (*Id.* at 14:50-14:51.) Deputy Gamboa explains to
22 Sarge that the First Group is probably unrelated to the Second Group, which contains the
23 suspected shooter—the man in the pink button-down. He relays that the First Group said
24 the white Chevrolet truck got stuck. Deputy Gamboa tells Sarge he’s probably just going
25 to pat the First Group down, check their IDs, make sure they do not have guns, and then
26 get them on their way. (*Id.* at 14:51-15:08; *see also id.* at 15:45-16:02.) Deputy Gamboa
27 explains that the Second Group matches the description that Deputy Johnson put out (of
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1 the group suspected of target shooting who rode away from Deputy Johnson when he
2 first encountered them), and gives Sarge various reasons why he thinks the Second
3 Group is the group of suspected unauthorized target shooters he was called out to
4 investigate. (*Id.* at 15:08-15:45.)

5 A few seconds later, Deputy Gamboa finishes talking with Sarge, and approaches
6 the First Group. (*Id.* at 16:34.) Over the course of the next 17 minutes or so, Deputy
7 Gamboa eventually discovers that Defendant's Chevrolet Avalanche contains three
8 firearms (the firearms referenced in the indictment), a knife, and a case of ammunition.
9 (*Id.* at 16:35-33:13.) During this time, Deputy Gamboa also pats Defendant down, takes
10 his ID, runs it, and learns he is a felon. (*Id.*) Defendant initially denies that he has any
11 firearms several times, but eventually admits he does when Deputy Johnson makes
12 multiple passes around his Chevrolet Avalanche, finding first a case of ammunition and
13 then the barrel of an assault rifle by shining his flashlight into the truck—and after Deputy
14 Gamboa confronts Defendant with what Deputy Johnson saw. (*Id.*; see also ECF No. 20-
15 5 at 6-7) Eventually, Deputy Gamboa places Defendant under arrest. (ECF No. 20-6 at
16 32:30-35.) After asking Defendant if they can look in his truck, Deputies Gamboa and
17 Johnson extensively search through Defendant's Chevrolet Avalanche. (*Id.* at 38:07-
18 45:55.) Nobody ever read Defendant his *Miranda* rights that night. (*See generally id.*)

19 III. DISCUSSION

20 Defendant challenges his initial detention, arguing that all evidence flowing from
21 that illegal detention should be suppressed. The Court agrees that Defendant was seized
22 within the meaning of the Fourth Amendment from the inception of his interactions with
23 Deputy Gamboa, and that Deputy Gamboa lacked the requisite particularized, reasonable
24 suspicion for the seizure within the framework of an investigatory stop.

25 A. Seizure

26 Defendant argues that he was seized from within seconds of the beginning of his
27 interaction with Deputy Gamboa, because Deputy Gamboa nearly immediately asked him
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1 to keep his hands where he could see them, repeatedly confirmed he was not free to
2 leave, and nobody in Defendant's circumstances would have believed he was free to
3 leave. (ECF No. 20 at 17.) The government counters that the interaction between Deputy
4 Gamboa and Defendant was consensual, and Defendant could have left at any time.
5 (ECF No. 29 at 9-12.) The Court agrees with Defendant.

6 "Only when the officer, by means of physical force or show of authority, has in
7 some way restrained the liberty of a citizen may we conclude that a 'seizure' has
8 occurred." *Fla. v. Bostick*, 501 U.S. 429, 434 (1991) (quoting *Terry v. Ohio*, 392 U.S. 1,
9 19, n. 16 (1968)). Said otherwise, "[s]o long as a reasonable person would feel free 'to
10 disregard the police and go about his business,' the encounter is consensual and no
11 reasonable suspicion is required." *Id.* (internal citation omitted).

12 Here, Deputy Gamboa did not use any physical force on Defendant, or at least not
13 until much later in their interactions. (ECF No. 20-6 at 32:30-35 (putting Defendant in
14 handcuffs).) Rather, he seized Defendant through his show of authority. And neither
15 Defendant nor any reasonable person in Defendant's position would have felt free to
16 disregard Deputy Gamboa and go about his business. Thus, Deputy Gamboa detained
17 Defendant—or "seized" him within the meaning of the Fourth Amendment—from the
18 beginning of their interaction.

19 The most helpful piece of evidence presented to the Court on this point is
20 Gamboa's bodycam video. (ECF No. 20-6.) Shortly after encountering the First Group
21 and before the Second Group approaches, Deputy Gamboa asked Defendant and the
22 other two individuals to keep their hands where he can see them. (*Id.* at 1:44-1:50.) About
23 three minutes later, Defendant appears to ask he if can go, and Deputy Gamboa responds
24 he cannot. (*Id.* at 4:48-5:18.) He instead tells Defendant that he is going to try and get
25 him out of here as soon as he can. (*Id.*) Moreover, about another 10 minutes later,
26 Defendant seems to ask if he can leave (though it is hard to hear), and Deputy Gamboa
27 tells him he cannot. (*Id.* at 14:04-14:25.) This is at least the second time that Deputy

1 Gamboa responded to a question from Defendant with an explanation he was not free to
2 go. (*Id.* at 4:48-5:18.) These retroactive confirmations that Defendant was not free to
3 leave show Deputy Gamboa seized Defendant from the beginning of their interaction.
4 (ECF No. 20 at 17 (citing *U.S. v. Black*, 707 F.3d 531, 538 (4th Cir. 2013) (“The verbal
5 directive from the officers not to leave was not the initiation of the seizure, but rather an
6 affirmation that [the defendant] was not free to leave.”) (finding that the defendant was
7 seized and investigating officer lacked reasonable suspicion to initiate a *Terry* stop)).)

8 The government’s response brief (ECF No. 29 at 9-12) ignores these exchanges
9 where Deputy Gamboa tells Defendant he is not free to go, and thus, the government’s
10 characterization that there were two, separate but consensual encounters between
11 Deputy Gamboa and Defendant is unpersuasive in light of the totality of the
12 circumstances revealed through the Gamboa bodycam video. Moreover, other indicia
13 beyond Deputy Gamboa telling Defendant he was not free to leave also point towards the
14 Court’s conclusion that he was seized from the beginning of his interaction with Deputy
15 Gamboa.

16 For example, the First Group does not really move for the 12 minutes in which
17 Deputy Gamboa is detaining the Second Group. If they felt they were free to go, they may
18 have continued trying to pull the white Chevrolet 3500 out, and may have also left. (ECF
19 No. 20-6 at 0:00-14:04.) But they did not. Further, the First Group continues not to move
20 after Deputy Gamboa tells them they cannot, until he starts directing their movement, and
21 they consistently comply—beginning with allowing Deputy Gamboa to frisk them. (*Id.* at
22 14:25-17:05) Thus, the most reasonable interpretation of Deputy Gamboa’s bodycam
23 footage is that Defendant, and the other two men making up the First Group were
24 detained from the beginning of their first interaction because they did not think they were
25 free to go.

26 Further, neither Defendant, nor a reasonable person in his position, would have
27 thought he was free to leave for the additional reason that he witnessed Deputy Gamboa’s

1 escalating display of authority as Deputy Gamboa detained the Second Group. (*Id.* at
2 2:42-14:00.) To elaborate, Deputy Gamboa asserts his authority over the Second Group
3 as Defendant watches by detaining the Second Group, beginning by ordering the man in
4 the pink button-down on the ATV to stop, asking him questions, frisking him, and
5 eventually putting him in handcuffs. (*Id.*) He also orders the other three members of the
6 Second Group to sit in the dirt while he gets the ATV driver to admit he has a handgun in
7 the green SUV, takes all of their IDs, and searches both the SUV and the truck with the
8 ATV in the back. (*Id.*) This escalating display of authority would also suggest to Defendant
9 he was not free to go because the Second Group was not, and they were also under
10 Deputy Gamboa's control.

11 Finally, the commands phrased as questions that Deputy Gamboa issued to
12 Defendant (and the rest of the First Group) both before and after he detained the Second
13 Group would also suggest to Defendant he was not free to go. First, Deputy Gamboa
14 asked Defendant to keep his hands where he could see them, and not make any sudden
15 movements, before turning to the Second Group. (*Id.* at 1:44-1:50.) While he phrased his
16 request as a question, Deputy Gamboa did not indicate Defendant was free to say no.
17 And as discussed above, when Defendant inquires a few minutes later, Deputy Gamboa
18 explains he was not free to go, removing any ambiguity that may have existed. (*Id.* at
19 4:48-5:18.) Second, after Deputy Gamboa finished with the Second Group, Deputy
20 Gamboa had the First Group submit to being frisked. (*Id.* at 14:04-14:45; see also *id.* at
21 16:20-19:00.) Though Deputy Gamboa phrased his frisk request as a question, he does
22 not say that Defendant and the other two men making up the First Group were able to
23 decline his request, and having watched Deputy Gamboa detain four other men, frisk
24 them, and search their vehicles, Defendant would not reasonably think he was able to. In
25 sum, Deputy Gamboa detained Defendant from around the time he first encountered him.

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1 **B. Investigatory Stop and Reasonable Suspicion**

2 Having found that Deputy Gamboa seized Defendant from the beginning of their
3 interactions, Deputy Gamboa had to have “reasonable suspicion supported by articulable
4 facts that criminal activity ‘may be afoot[.]’” *U.S. v. Basher*, 629 F.3d 1161, 1165 (9th Cir.
5 2011), for his investigatory stop of Defendant to pass constitutional muster under *Terry*.
6 “In deciding whether a stop was supported by reasonable suspicion, the Court must
7 consider whether ‘in light of the totality of the circumstances, the officer had a
8 particularized and objective basis for suspecting the particular person stopped of criminal
9 activity.’” *Id.* Said otherwise, “[a]n investigatory stop must be justified by some objective
10 manifestation that the person stopped is, or is about to be, engaged in criminal activity.”
11 *U.S. v. Cortez*, 449 U.S. 411, 417 (1981) (citation omitted). “The ‘reasonable suspicion’
12 necessary to justify such a *Terry* stop depends ‘upon both the content of information
13 possessed by police and its degree of reliability.’” *Foster v. City of Indio*, 908 F.3d 1204,
14 1213-14 (9th Cir. 2018) (citation omitted). “In applying this standard, we take into account
15 the ‘totality of the circumstances.’” *Id.* at 1214 (citation omitted).

16 Here, the government points to four factors in support of its argument that Deputy
17 Gamboa reasonably suspected Defendant had committed the misdemeanor crime of
18 unauthorized target shooting: (1) he was dispatched on a call for service from two different
19 911 callers, one of whom agreed to identify himself, complaining of shooting in an area
20 about a half a mile from where he encountered Defendant; (2) he knew some types of
21 target shooting were not permitted in the precise location where he encountered
22 Defendant; (3) only about 15 minutes had elapsed from the call for service when he first
23 encountered Defendant, and he could infer based on the white truck being stuck that
24 Defendant had been there for at least 15 minutes; and (4) he was concerned about the
25 risk of unauthorized target shooting starting a wildfire (a public safety concern). (ECF No.
26 29 at 13-16.)

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1 The problem with the government's argument is that only parts of factors (1), (2)
2 and (3) are at all particularized to Defendant—and all turn on Defendant's location.
3 Beyond where Defendant was located at the time Deputy Gamboa encountered him,
4 nothing particularly points to Defendant having a gun or that he was shooting.⁴

5 To start, it is clear from Deputy Gamboa's bodycam video that Defendant is not
6 shooting or holding any sort of gun when Deputy Gamboa first encounters him. (ECF No.
7 20-6 at 0:00-1:50.) In their first two minutes of interaction, Defendant and the other two
8 men making up the First Group tell Deputy Gamboa, in response to his questions, that
9 they have not been shooting, and do not have any guns. (*Id.*) They also say they had
10 heard some shooting, and had seen some men on ATVs who might have been shooting.
11 (*Id.*) They also explain that they are trying to get the white truck unstuck. And the white
12 truck does look stuck. (*Id.*) None of this suggests Defendant had a gun.

13 Further, the information Deputy Gamboa learned from the Second Group pointed
14 towards them being the shooters he was dispatched to look for, and thus even farther
15 away from a reasonable suspicion Defendant had a gun. In the 12 minutes Deputy
16 Gamboa focuses on the Second Group, Deputy Gamboa and Deputy Johnson—again,
17 one of his colleagues who arrives on the scene—learn that the second group of men with
18 the ATVs have at least one gun they were not initially forthcoming about. Deputy Gamboa
19 also appears to conclude that the man on the ATV was the one shooting (ECF No. 20-6
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22 ⁴Of course, Defendant did have a gun in his Chevrolet Avalanche. He had three
23 guns, one of which is an assault rifle. He also had at least one knife in his truck, and an
24 entire case of ammunition. But just because Deputy Gamboa's hunch was correct, that
25 does not mean his initial investigatory stop of Defendant was constitutional. See, e.g.,
26 *U.S. v. Grigg*, 498 F.3d 1070, 1083 (9th Cir. 2007) ("There is a traditional and
27 constitutionally preserved interest in personal security from governmental intrusion, which
28 fuels the requirements that the police obtain warrants before making an arrest and that
police have reasonable suspicion that criminal activity is afoot before making a *Terry*
stop."); see also *id.* at 1081-83 (finding investigatory stop was not supported by
reasonable suspicion and was thus unconstitutional).

1 at 13:15-13:17)—and he tells Sarge that while also characterizing the First Group as
2 probably unrelated (*Id.* at 14:50-16:02). Thus, as Defendant argues (ECF No. 20 at 9-11),
3 it is unreasonable that Deputy Gamboa persisted in detaining Defendant, and later
4 insisted on patting him down and searching his truck, where Deputy Gamboa appears to
5 have already accomplished his mission in responding to the call for service when he
6 identified the man on the ATV as the person who had been shooting guns. Deputy
7 Gamboa's intervening detention of the Second Group of men seemed to provide an
8 alternate source for the target shooting Deputy Gamboa was investigating. This does not
9 add, and instead detracts, from any reasonable suspicion that Defendant had a gun.

10 Moreover, neither Deputy Gamboa nor Deputy Johnson's police reports (ECF Nos.
11 20-4, 20-5) provide any explanation regarding why they suspected Defendant of having
12 a gun, or why they detained him for an extended period of time. *See, e.g., U.S. v. I.E.V.*,
13 705 F.3d 430, 437 (9th Cir. 2012) (affirming the district court's factual finding that a police
14 officer's justification for a frisk, that the defendant was nervous, was not credible when it
15 was not included in his police report prepared closer in time to the frisk). They essentially
16 say that they were responding to a call for service about gunshots, detained Defendant,
17 and eventually found his guns. (ECF Nos. 20-4 at 3-5, 20-5 at 6.) The reports are missing
18 the crucial explanation of why they detained Defendant in particular.

19 While the government does provide an after-the-fact affidavit (ECF No. 29-3) in
20 which Deputy Gamboa explains that he knew people often went target shooting in this
21 area, and that it was unlawful to shoot a firearm that was not a BB gun or shotgun in the
22 spot he encountered Defendant, this evidence does not offer any particularized
23 reasonable suspicion that Defendant had a gun at the beginning of his interaction with
24 Deputy Gamboa. At most, it shows that Deputy Gamboa had a right to question anybody
25 he encountered at this particular spot about target shooting. And Deputy Gamboa did
26 that. But Defendant answered that he had not been shooting. Nevertheless, Deputy
27 Gamboa detained Defendant for about another half hour before Deputy Johnson saw

1 ammunition in the backseat of Defendant's truck by shining his flashlight into it. This was
2 the tipping point, where Deputies Gamboa and Johnson confronted Defendant, and he
3 eventually admitted he did have guns in the car—after again denying it. But setting what
4 eventually happened aside, Gamboa's affidavit does shed any light on why Deputy
5 Gamboa suspected Defendant had a gun when he initially encountered him.

6 The government also points to the 911 calls (ECF No. 29 at 13-16), but those too
7 contain no information particularized to Defendant. As described above, the 911 calls
8 (ECF No. 20-2) are from two residents who had been hearing gunshots for the last several
9 hours, and wanted the police to go make the gunshots stop. Neither caller said anything
10 about the type of gun being fired or who was shooting them—nor, realistically, could they.
11 They were hearing gunshots in the distance from their houses. The callers guess the
12 gunshots are coming from the area up the dirt road by the water towers, as both appear
13 to know that is an area where people often go shoot guns. But nothing in the calls points
14 to Defendant as the source of the gunshots. This distinguishes this case from cases
15 discussing whether 911 calls contributed to reasonable suspicion, where the reliability of
16 the 911 call tends to turn on eyewitness knowledge, or specific information about a
17 particular person that the police confirm when they arrive on scene. *See Foster*, 908 F.3d
18 at 1213-17 (discussing the factors the Ninth Circuit considers in weighing whether a 911
19 call gives rise to reasonable suspicion justifying an investigatory stop). Here, the 911
20 callers were not eyewitnesses of any crime, and the 911 calls contained no information
21 particularized to Defendant. (ECF No. 20-2.)

22 The government also discusses the valid public safety purpose of the call for
23 service—preventing wildfires—which was also a reason the 911 callers cited when they
24 requested the call for service. (ECF No. 29 at 13-16.) There is no dispute that preventing
25 wildfires is in the public interest, and important. But nothing about a desire to prevent
26 wildfires makes Defendant uniquely suspicious in the absence of any initial evidence he
27 was shooting guns. This argument is therefore mostly beside the point.

1 In addition, the government relies on *Basher*, 629 F.3d 1161, to argue that Deputy
2 Gamboa reasonably suspected Defendant had a gun from his first interaction with
3 Defendant. (ECF No. 29 at 13.) However, the investigating officers in *Basher* had much
4 more information—much more particularized to Basher—than Deputy Gamboa had about
5 Defendant here. Specifically, they had been camping while off duty the night before, heard
6 shooting all night, and were able to pinpoint the location the shooting was coming from to
7 a nearby campsite they were familiar with. See *Basher*, 629 F.3d at 1163. The next
8 morning, they checked into duty and decided to go investigate. See *id.* One of them saw
9 a box of shotgun shells in Basher’s truck, in plain view, as he arrived, before they even
10 encountered Basher. See *id.* They both also saw a fire ring with a fire still smoldering in
11 it before they encountered Basher, and knew that fires were prohibited in that location.
12 See *id.* at 1164. Thus, the investigating officers in *Basher* had much more information
13 suggesting the people in the tent they approached were doing something unlawful by the
14 time they announced themselves, and Basher and his son came out of the tent, than
15 Deputy Gamboa had about Defendant when he first encountered him.

16 Really all Deputy Gamboa had was a hunch that somebody in the spot he found
17 Defendant could have been the source of the shooting the 911 callers had reported. And
18 even though *Terry* is not a high standard to meet, Deputy Gamboa did not meet it here.
19 Without something linking Defendant in particular to the reported gunshots, the
20 government cannot show the requisite “objective manifestation that *the person stopped*
21 *is, or is about to be, engaged in criminal activity.*” *Cortez*, 449 U.S. at 417 (emphasis
22 added). Such evidence simply does not exist here.

23 In sum, because Deputy Gamboa seized Defendant without the reasonable
24 suspicion constitutionally required to initiate an investigatory stop, the Court will grant
25 Defendant’s Motion. And as the Court is granting the Motion, the Court need not reach
26 Defendant’s other arguments.

Moreover, the Court agrees with Defendant that all evidence collected in this case flows from the initial unlawful detention. (ECF No. 20 at 18-19; see also ECF No. 33 at 2.) Notably, the government does not argue for any sort of partial suppression remedy in its response. (ECF No. 29.) And the Court finds that one would not be warranted. The Court will therefore suppress all of the evidence collected by the government in this case as the fruit of the poisonous tree rooted in Deputy Gamboa's seizure of Defendant without the particularized reasonable suspicion required by *Terry* and its progeny. See, e.g., *U.S. v. Washington*, 490 F.3d 765, 776-77 (9th Cir. 2007) (finding that suppression of firearm was warranted as fruit of the poisonous tree even where the defendant later consented to a search of his car because the police officers' initial stop lacked reasonable suspicion).

IV. CONCLUSION

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the issues before the Court.

It is therefore ordered that Defendant's motion to suppress (ECF No. 20) is granted. All evidence collected by the government in this case is suppressed.

DATED THIS 21st day of April 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE